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VIA, ELECTRONIC FILING

The Honorable Jocelyn Boyd
Chief Clerk and Administrator
The Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

Re: • Docket 2018-202-E
 • Comments

Ms. Boyd:

These Comments are provided on behalf the South Carolina Solar Business Alliance, Inc., (“SBA”). I respectfully request that the Commission consider these Comments in the above-referenced Docket.

Pursuant to S.C. Code Reg. 103-825 of the Rules of Practice and Procedures of the Public Service Commission of South Carolina (“Commission”), and other applicable Rules and Regulations, the SBA by and through counsel, hereby files the following Comments in response to the Petition Of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively, “Duke”) to Extend Limited Waivers of Generator Interconnection Procedures and Planned Issuance of CPRE Tranche 2 Queue Number (“Petition”), filed with this Commission on August 30, 2019. SBA does not oppose Duke’s request, but submits that the Commission should impose conditions on any waiver (in addition to those imposed in its Order approving Duke’s Tranche 1 waiver petition) to address concerns about discrimination against non-CPRE projects.

SBA takes no position on Duke's request that the Commission authorize it to seek rate recovery of Upgrade costs for CPRE projects, but requests that the Commission, however it decides this issue, implement the mechanisms proposed by Duke to reduce uncertainty about interconnection costs for all projects interconnecting under the South Carolina Generator Interconnection Procedures ("SCGIP").

I. Non-discrimination Against Non-CPRE Projects

As noted by this Commission when it approved Duke's previous petition for waiver, PURPA and implementing regulations require utilities "...to both interconnect with renewable power producers, regardless of location within a state, and purchase power from those producers in a nondiscriminatory manner." Order No. 2018-803(A) (Dec. 19, 2018) at 2. South Carolina Act 62 also requires all interconnection standards to be implemented in "...a fair, reasonable, and nondiscriminatory manner" with respect to interconnection customers, S.C. Code Ann. § 58-27-460. To safeguard against discrimination against non-CPRE projects, Order No. 2018-803(A) required Duke to report aggregate statistics related to the processing of interconnection requests for CPRE and non-CPRE projects in its quarterly queue status reports. Order No. 2018-803(A) at 16-18.

SBA appreciates the Commission's inclusion of these safeguards in its Order approving Duke's initial waiver request. However, SBA continues to have concerns about the discriminatory treatment of non-CPRE projects in the interconnection process and requests that the Commission condition any approval of Duke's Petition on the imposition of additional safeguards against discrimination.

Specifically, SBA notes that the quarterly reports Duke has produced since Order No. 2018-803(A) have not included any comparative information about the treatment of CPRE versus non-CPRE projects, despite the Commission's directive that Duke include such information. This was understandable before Tranche 1 selections were finalized; however, Duke's most recent report, filed on August 1, also does not include any of the requested information, either omitting this information or stating that it will be produced in a subsequent quarterly report. *Second Quarter 2019 Generator Interconnection Report*, Docket No. 2018-

202-E (Aug. 1, 2019) at 9.¹ Duke should be required to provide this information before the Commission can approve Duke’s Petition, so that the Commission can assess whether Duke has complied with its non-discrimination obligations.

SBA also has concerns that, even if non-CPRE projects are not discriminated against in the interconnection study process, they will be disadvantaged in the construction process, if Duke allocates construction resources to accelerate the completion of work on CPRE projects in order to meet the July 1, 2021 deadline for completion of interconnection work for Tranche 1 projects. That date is less than two years away and Duke’s standard timelines for construction of System Updates suggest that some Tranche 1 projects may have difficulty meeting that deadline unless they receive preferential treatment in the construction phase. SBA members have also received anecdotal reports – which, to be clear, have not been independently verified – that some Duke employees have represented to landowners associated with CPRE projects that the Companies would accelerate the interconnection of CPRE projects to meet those deadlines.

SBA does not claim that it is Duke’s policy or intention to divert construction resources away from non-CPRE projects to CPRE projects, but believes that it would be appropriate for the Commission to: (a) clarify that Duke’s nondiscrimination obligation applies to allocation of construction resources; and (b) require Duke to include information about construction timelines and FTEs devoted to construction of CPRE versus non-CPRE projects in its quarterly reports on a prospective basis.

II. Cost recovery for Upgrades

One of the key issues raised in the Petition is Duke’s request that the Commission consider cost recovery of “grid Upgrade costs” for projects that are selected in CPRE Tranche 2.² SBA takes no position on whether this request should be granted. As indicated in the Petition, the cost of Upgrades will be taken into account in CPRE whether or not that cost is included in the rate base. If those costs are directly recoverable, they will be weighted in the evaluation of bid costs; if they are not recoverable, then Market Participants will have to account for the likely cost of Upgrades in their bids.

¹ With respect to the requirement to provide “Information on Interconnection Study Intervals for System Impact Studies and Facilities Studies for CPRE versus non-CPRE projects” and “The number of CPRE versus non-CPRE projects that achieved each significant interconnection milestone ... during the reporting period,” the discussion simply cross-references another section of the August 21 report, which includes statistics on non-CPRE projects but no information on CPRE projects. August 21 Report at 9.

² Although the Petition is not clear on this point, SBA assumes that Duke’s use of the term “Upgrades” is consonant with the definition of that term under the SCGIP.

SBA does agree with Duke's view, shared with other stakeholders in the CPRE program stakeholder's group that uncertainty about the cost of Upgrades makes it impossible for CPRE bidders to accurately reflect the cost of those upgrades in their bids. Petition at 15-16. As noted by Duke, even after the "grouping study" authorized by Order No. 2018-803 has been conducted, there is the potential for the actual cost of Upgrades to "unreasonably exceed" estimates prepared during interconnection studies and used to evaluate the cost-effectiveness of bids. Petition at 17. If Upgrades are rate-based, then ratepayers bear the risk of that uncertainty. If CPRE Market Participants ("MPs") bear the cost, then they bear that risk and must adjust their bids upward to account for the possibility that Upgrade costs will exceed estimates.

Unfortunately, the recent experience of SBA members developing projects in Duke's service territories shows that the risk of interconnection costs (both for Upgrades and Interconnection Facilities) unreasonably exceeding estimated costs is very significant.

To provide context: under the SCGIP, after the utility completes interconnection work on a project it may, pursuant to Section 6.1.1 of the standard Interconnection Agreement ("IA"), invoice the Interconnection Customer for any difference between the estimated cost of interconnection Facilities and Upgrades and the actual cost of that work. Since early 2019, SBA members have received invoices from Duke for massive cost overruns for completed interconnection work, amounting to many millions of dollars in interconnection costs over and above the costs estimated in the IAs for those projects. These invoices have often arrived several months after completion of work, far outside the 60-day window contemplated in the IA. For many projects, the costs reflected in these invoices have been two to three times the estimated costs in the projects' Interconnection Agreements.

SBA members have initiated disputes under the SCGIP regarding these additional invoices, and while they are hopeful that these disputes can be resolved informally, the uncertainty caused by these extreme cost overages is highly disruptive and promises to undermine the goals of CPRE. Unless the Commission adopts some mechanism to curb cost exceedances, MPs in Tranche 2 will be forced to raise their bids significantly to account for the risk of interconnection cost overages. An across-the-board rise in bid prices to account for uncertain interconnection costs could severely impact the CPRE program, which now has South Carolina-specific statutory authorization pursuant to Act 62.

Duke recognizes that there is significant uncertainty about actual interconnection costs, and that this is a problem for CPRE. Duke proposes in its Petition that this Commission follow the lead of the North Carolina Utilities Commission and adopt a presumption, for CPRE purposes, that Upgrade costs in excess of 25% over the costs estimated in the study process are unreasonably incurred and not recoverable. Petition at 18-19 (citing *Order Modifying and Accepting CPRE Program Plan*, at 17-18, NCUC Docket Nos. E-2, Sub 1159 and E-7, Sub 1156 (July 2, 2019)).

SBA agrees that if the Commission were to authorize Duke to seek recovery of Upgrade costs for CPRE projects, this presumption would be an appropriate way to address cost overruns in the CPRE context. As discussed, however, uncertainty about the ultimate cost of interconnection for CPRE projects will impact ratepayers whether Upgrade costs are rate-based, or are borne by MPs and factored into bid pricing. SBA therefore requests that, however it rules on Duke's request for authorization to rate-base CPRE Upgrade costs, the Commission adopt a presumption that interconnection cost exceedances greater than 25% over estimated costs in the IA are unreasonable and unrecoverable, whether from ratepayers or MPs.³

SBA also requests, in light of Act 62's directive that interconnection standards are to be implemented in "...a fair, reasonable, and nondiscriminatory manner" with respect to interconnection customers, S.C. Code Ann. § 58-27-460, as well as PURPA's requirement of nondiscriminatory treatment of QFs, that the Commission apply this presumption to interconnection costs incurred on all projects subject to the SCGIP. As discussed, such a presumption would not bar the utility from invoicing the customer for interconnection costs in excess of the estimates provided by the utility in the IA. It would simply require that where those costs exceed estimates by more than 25%, the utility show that they were reasonably incurred. A 25% limit is consistent with the approach taken by other state utilities commissions that have provided "guardrails" on interconnection cost exceedances,⁴ though the fact that it is a rebuttable presumption rather than a hard "cap" makes it significantly more forgiving to the utility.

³This presumption would not be irrefutable: the utility could rebut the presumption "by competent, material, and substantial evidence" demonstrating that the additional costs were reasonably incurred. Petition at 18.

⁴ Massachusetts, Utah, Oregon, and California have all limited developer liability for interconnection costs to 125% of estimated costs. See National Renewable Energy Laboratory, Review of Interconnection Practices and Costs in the Western States (Apr. 2018) at 47, available at <https://www.nrel.gov/docs/fy18osti/71232.pdf>; M.D.P.U. No. 1320 (Oct. 1, 2016), *Standards for Interconnection of Distributed Generation for National Grid*, Ex. G § 5.1.

III. Conclusion

In conclusion, SBA believes that: (1) if this Commission grants the Petition, this Commission should impose additional reporting requirements to safeguard against discrimination against non-CPRE projects in the allocation of construction resources; and (2) this Commission should impose reasonable safeguards on interconnection cost overages, along the lines of those proposed by Duke, for all interconnection customers.

Respectfully Submitted,
WHITT LAW FIRM, LLC

/s/Richard L. Whitt
Richard L. Whitt,
As Counsel for the South Carolina Solar
Business Alliance, Inc.

RLW/cas

cc: All parties of Record in Docket 2018-202-E, *via electronic mail*